

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**FAUSTINO XAVIER BETANCOURT
COLÓN**

Plaintiff,

v.

**TIDEL REALTY CORP.; PLAZA
LOIZA CORPORATION; ENCANTO
RESTAURANTS, INC.; ET AL**

Defendant(s)

Civil Action 3:22-cv-01294

MOTION TO REMAND TO STATE COURT

COMES NOW Faustino Xavier Betancourt Colón, through the undersigned attorney, and hereby moves to remand on the following grounds:

APPLICABLE LAW

1. Under 28 U.S.C. § 1447(c), this Court has authority to examine a notice of removal to determine if removal is proper, Defendant Encanto Restaurants, Inc. d/b/a Pizza Hut ("Pizza Hut") as the party seeking to remove a case to federal court, has the burden of demonstrating the existence of federal jurisdiction. See BIW Deceived v. Local S6, 132 F.3d 824, 831 (1st Cir. 1997); In re Whatley, 396 F.Supp.2d 50, 53 (D. Mass. 2005). "[S]tatutory procedures for removal are to be strictly construed." Syngenta Crop. Prot., Inc. v. Henson, 537 U.S. 28, 32 (2002); see also Danca v. Private Health Care Sys., Inc., 185 F.3d 1, 4 (1st Cir. 1999).

2. In general, courts will only allow removal with the unanimous consent of all defendants. Chicago, Rock Island & Pac. Ry. Co. v. Martin, 178 U.S. 245, 248 (1900); Esposito v. Home Depot U.S.A., Inc., 590 F.3d 72, 75 (1st Cir. 2009). This "rule of unanimity" has been codified in the 2011 amendments to Section 1446. Griffioen v. Cedar Rapids & Iowa City Ry. Co., 785 F.3d 1182, 1186 (8th Cir. 2015) (citing Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub.L. 112-63, § 103, 125 Stat. 758, 760 (codified as amended at 28 U.S.C. § 1446)).

**GROUND FOR REMOVAL NON-REMOVING
PARTIES FAILED TO CONSENT**

3. Pizza Hut failed to show that the non-removing defendants independently expressly consent to removal. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Pizza Hut should have obtained consent from all non-removing parties, such as a written consent unambiguously agreeing to removal. Accordingly, Pizza Hut failure to provide proof of written consent constitutes a fatal procedural defect in the removal procedure and warrants a remand of the case.
4. Pizza Hut failed to show that the following defendants (1) agree to removal, warranting remand:
 - a) TIDEL REALTY CORP
 - b) PLAZA LOIZA CORPORATION

FEES AND COSTS ARE PROPER

5. 28 U.S.C. § 1447(c) provides that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." Because Pizza Hut removed this case without just cause, without the affirmative consent of

the defendants, this case should be remanded to the Puerto Rico Court of First Instance and costs and fees must be imposed.

I HEREBY CERTIFY THAT I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED,

DATED: June 23, 2022.

VELEZ LAW GROUP LLC
Civil Rights Division

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